IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1517 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANBHAI ALIAS ZARAKH PRATAPBHAI RAWAT

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1517 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

Ms. Mita Panchal, AGP for Respondent No. 1,3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 17/03/2004

ORAL JUDGEMENT

The petitioner-detenu has preferred this petition

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 22.9.2003 passed by respondent No. 1 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the ground that seven offences were registered against the petitioner during the period from 9.7.2002 to 3.8.2003 and two unnamed witnesses had given statement against the petitioner stating that the petitioner was guilty of violating 'public order'. The petitioner was arrested on the date of the order itself and he is under detention since then. The petitioner has challenged the aforesaid order of the detention on various grounds. It has been contended that the petitioner has not committed any violation of public order and that the order has been passed against the petitioner without proper application of mind. That therefore, the order of detention is illegal and deserves to be set aside. The petitioner has, therefore, prayed that the impugned order of detention be set aside and the petitioner may be set at liberty forthwith.

2. On receiving the petition, rule was issued and in response to the service of notice of rule, Ms. Mita S Panchal, learned AGP has appeared. She has also submitted affidavit of the detaining officer which is taken on record. At the stage of final hearing, learned Advocate for the petitioner has argued that though seven offences have been registered against the petitioner during the period from July 2002 to August 2003, and though two unnamed persons appear to have given some statements against the petitioner, the petitioner is not shown to be a person who could be treated to be dangerous person or a person who has committed violation of public order and, therefore, the detaining authority ought not to have passed the order in question directing his detention in terms of the said order.

3. On going through the detention order dated 22.9.2003 placed at page no.15, it is found that seven offences have been registered against the petitioner during the aforesaid period. They all related to the offences punishable under section 447, 457, 379 and 380.

4. During the course of her argument, learned Advocate for the petitioner has contended that there were in all five accused persons involved in the aforesaid offences and four of them had filed Special Civil Application before this Court and in their petitions, the detention orders against them passed on the basis of the aforesaid common criminal cases were set aside and the

detenus were ordered to be released by this Court. In support of the said argument, she has referred to an order of this court dated 10.3.2004 passed in Special Civil Application No.16720 of 2003 and allied matters. On going through the order passed in the aforesaid matter, it is clear that the detenus in the said matters were also involved in the aforesaid seven IPC cases registered against the petitioner. It therefore, appears that the petitioner and those detenus were involved in the aforesaid seven IPC cases and the statements of unnamed witnesses were also common against all the detenus including the present petitioner. Therefore, the case of the present petitioner is on par with the case of those detenus.

5. When the detenus in the said petition have been released and when the detention orders passed against them were struck down by this court, on the principle of parity, it is necessary to strike down the detention order passed against the present petitioner. Therefore, having regard to the facts and circumstances of the case and to the arguments advanced by the learned Advocates for the parties, I am of the view that the present detention order is required to be struck down on the principle of parity.

6. For the foregoing reasons, this petition is allowed. The impugned order dated 22.9.2003 passed by respondent No.1 in exercise of powers under section 3(2) of the PASA Act detaining the present petitioner, is ordered to be set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case.

Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]
msp